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SENATE

{ REPORT
{ No. 1238

SAN FRANCISCO MOUNTAIN SCENIC BOULEVARD CO.

APRIL 3 (legislative day MARCH 30), 1942.—Ordered to be printed

Mr. HUGHES, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 244]

The Committee on Claims, to whom was referred the bill (S. 244) for the relief of the San Francisco Mountain Scenic Boulevard Co., having considered the same, report favorably thereon, and recommend that the bill do pass with the following amendment:

At the end of the bill add the following:

Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

The measure is identical with S. 2979 (76th Cong.) and similar in import to S. 68, which was passed by the Senate and the House at the first session of the Seventy-sixth Congress but which on August 10, 1939, was disapproved by the President under what your committee regards as a misapprehension as to the purpose of the legislation. No doubt because he had not been sufficiently informed as to S. 68, and because it was loosely drawn, the President felt that its approval would not be proper on the ground that there was no obligation on the part of the Government to reimburse private individuals for construction work done on public lands. The second bill, S. 2979 (with which S. 244 is identical), was redrawn in order to make it entirely clear that the San Francisco Mountain Scenic Boulevard Co. is not to receive payment for any claim that company may have against the United States, but merely to be reimbursed for a portion of its expenditures on that part of the San Francisco Mountain Scenic Boulevard which is of value to the United States for the protection, administration, and development of the Coconino National Forest. In all, the San Francisco Mountain Scenic Boulevard Co. spent more than \$150,000 on road construction within the Coconino National Forest, but a careful survey and appraisal by representatives of the United States Forest

Service has shown that only a small portion of the road built by the private company can be profitably utilized by the United States, and while the cost of construction of this portion ran considerably in excess of \$15,500, this figure has been selected by the Forest Service as the actual conservative value of this construction to the United States.

It is not felt by your committee that the enactment of the bill S. 244 would in any way create an undesirable precedent, and it is not the opinion of your committee that any new or different moral obligation would be raised by the favorable consideration of this bill. The United States is already morally, if not legally, obligated to pay just compensation for private property which it undertakes to utilize, and that is all that is proposed by the bill S. 244. Of course, your committee must agree with the President that an undesirable precedent would be created and that an unusual and different type of moral obligation would be implied were it proposed to pay the San Francisco Mountain Scenic Boulevard Co. the entire amount of its expenditures in highway construction within the Coconino National Forest, but the payment to the company of compensation equal to the reasonable value of that small portion of the boulevard which can be profitably and economically used by the United States, and which the United States would now be obliged to construct with its own funds had the boulevard not been built, certainly seems not to represent either an undesirable precedent or the creation of a new and unusual type of moral obligation. In his memorandum of disapproval dated August 10, 1939, in connection with S. 68, the President has implied that because the Government did not build the particular road in the first place, but left its construction to private interests, its use by the United States cannot now be in the public interest.

Concerned as he is with the preparation of an annual budget of governmental expenditures, certainly the President would be the last to contend that the United States at any time has had immediately available sufficient funds to do all of the public construction work which may be desirable and in the public interest. The fact that before the construction of the San Francisco Mountain Scenic Boulevard was undertaken by private interests the Government did not itself build the particular road is no argument that its construction was not in the public interest and is not beneficial to the Government. The attached report from the Secretary of Agriculture on S. 2979 indicates that that portion of the boulevard for which S. 244 proposes compensation is constantly and beneficially used by the United States Forest Service and would have to be constructed by that agency, probably at a figure in excess of \$15,500 if it had not already been built. It is only logical to suppose that the necessity for the construction from the standpoint of the Forest Service has existed since the forest was first established, but it does not follow from this assumption that funds were available for its construction immediately upon the establishment of the forest, and that because such funds were not then spent the project is not now in the public interest.

There is attached hereto and made a part of this report the following data: First, a copy of Senate Report No. 334, submitted on April 27, 1939, in connection with the bill S. 68 for the relief of the San Francisco Mountain Scenic Boulevard Co.; second, a copy of the President's memorandum of disapproval dated August 10, 1939; third, a

letter from the Acting Secretary of Agriculture, submitting his report on the bill S. 2979; and fourth, a letter from the Assistant Secretary of Agriculture commenting on the proposed report of your committee.

[S. Rept. No. 334, 76th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (S. 68) for the relief of the San Francisco Mountain Scenic Boulevard Co., having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

At the end of the bill add the following:

"*Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the bill is to pay to the San Francisco Mountain Scenic Boulevard Co. the sum of \$15,500 as full settlement of the claim of said company against the United States arising out of expenditures made for the benefit of the United States in the construction of the San Francisco Mountain Scenic Boulevard within the Coconino National Forest in Arizona.

The Acting Secretary of Agriculture recommends favorable consideration of the bill.

The records of the Department show that, under the regulations relating to the administration of the national forests, a permit was issued on March 29, 1920, to the San Francisco Mountain Scenic Boulevard Co. authorizing it to construct a road across national-forest lands so as to reach the summit of the San Francisco Peaks, a high mountain in this locality. The road was to be constructed within a specified time and was to be maintained in a serviceable condition to meet tourist demands. It was expected that the permittee would reimburse itself for expenditures made in the construction and maintenance of the road by charging a toll for the privilege of passing over the road. The company seems to have had difficulty in financing the project, since the construction of the road was never completed although the period for building it was several times extended. The company was not successful in obtaining sufficient revenue in the way of tolls from the road to maintain the portion constructed in a safe and serviceable condition and therefore the Department, after due notice, on January 19, 1938, canceled the permit so that thereafter the company had no control over the road, but for all practical purposes it became the property of the United States since it was constructed on lands of the United States.

The records further show that a portion of the road which was constructed is of value to the Forest Service in the administration of the Coconino National Forest since it makes parts of that forest accessible which otherwise would not be accessible to vehicular traffic. An examination by the Forest Service as to the cost of this part of the road, or rather what it would cost the Federal Government were it to construct a like road in this locality, indicates that the cost of such construction would be approximately \$15,500, the amount stated in the bill. In view of the fact that this road is of value to the Government in the administration of the Coconino National Forest and that were the Government forced to construct a like road it would be put to an expense of approximately \$15,500, the Acting Secretary states, "it is believed that it would be no more than equitable to pay the San Francisco Mountain Scenic Boulevard Co. the cost of such road construction and therefore this Department recommends S. 68 to the favorable consideration of your committee."

Your committee concur in the view of the Department, and it is accordingly recommended that the bill do pass.

The letter of the Acting Secretary of Agriculture is appended hereto and made a part of this report.

DEPARTMENT OF AGRICULTURE,

Washington, March 8, 1939.

Hon. M. M. LOGAN,

*Chairman, Committee on Claims,
United States Senate.*

DEAR SENATOR LOGAN: Receipt is acknowledged of your letter of February 13 enclosing copy of S. 68, a bill for the relief of the San Francisco Mountain Scenic Boulevard Co., and asking for a report thereon.

The proposed legislation would direct the Secretary of the Treasury to pay to the San Francisco Mountain Boulevard Co. \$15,500 as full settlement of the claim of the company against the United States growing out of expenditures made in the construction of a road within the Coconino National Forest, Ariz.

Under the regulations of this Department relating to the administration of the national forests, a permit was issued on March 29, 1920, to the San Francisco Mountain Scenic Boulevard Co. authorizing it to construct a road across national-forest lands so as to reach the summit of the San Francisco Peaks, a high mountain in this locality. The road was to be constructed within a specified time and was to be maintained in a serviceable condition to meet tourist demands. It was expected that the permittee would reimburse itself for expenditures made in the construction and maintenance of the road by charging a toll for the privilege of passing over the road. The company seems to have had difficulty in financing the project, since the construction of the road was never completed although the period for building it was several times extended. The company was not successful in obtaining sufficient revenue in the way of tolls from the road to maintain the portion constructed in a safe and serviceable condition and therefore the Department, after due notice, on January 19, 1938, canceled the permit so that thereafter the company had no control over the road, but for all practical purposes it became the property of the United States since it was constructed on lands of the United States.

A portion of the road which was constructed is of value to the Forest Service in the administration of the Coconino National Forest since it makes parts of that forest accessible which otherwise would not be accessible to vehicular traffic. An examination by the Forest Service as to the cost of this part of the road, or rather what it would cost the Federal Government were it to construct a like road in this locality, indicates that the cost of such construction would be approximately \$15,500, the amount stated in Senate bill 68.

In view of the fact that this road is of value to the Government in the administration of the Coconino National Forest and that were the Government forced to construct a like road it would be put to an expense of approximately \$15,500. It is believed that it would be no more than equitable to pay the San Francisco Mountain Scenic Boulevard Co. the cost of such road construction and therefore this Department recommends Senate 68 to the favorable consideration of your committee.

Sincerely,

HARRY L. BROWN, *Acting Secretary.*

PRESIDENT'S POCKET VETO

AUGUST 10, 1939.

I am withholding my approval of S. 68, entitled "A bill for the relief of the San Francisco Mountain Scenic Boulevard Co.," for the following reasons:

The purpose of this measure is to compensate the company in part for the value of a road constructed on Government property under a permit which has been revoked because of the inability of the company to complete its project.

Although the measure does not appear to be wholly devoid of merit, the facts cited in its support do not, in my opinion, import or establish any obligation on the Government to award compensation. No obligation would rest upon a private landowner under like circumstances.

To award compensation in this case would serve as a precedent in other cases involving much larger sums and would imply a moral obligation on the Government that might easily become embarrassing and very burdensome, if not a source of frequent scandal.

Furthermore, if the public interest was not sufficiently involved in the first place to move the Government to undertake such a project, the mere circumstances that private interests have attempted it and failed after making a valuable

improvement on Government property is not sufficient reason to justify the expenditure from the public funds.

For these reasons I believe the practice of making compensation in such cases is improvident and unwise.

(Signed) FRANKLIN D. ROOSEVELT.

DEPARTMENT OF AGRICULTURE,
Washington, November 25, 1939.

HON. EDWARD R. BURKE,
*Acting Chairman, Committee on Claims,
United States Senate.*

DEAR SENATOR BURKE: Reference is made to your letter of October 27 on behalf of the Senate Committee on Claims, enclosing a copy of Senate bill 2979 for the relief of the San Francisco Mountain Scenic Boulevard Co., and asking for a report thereon.

This measure is similar to Senate bill 68 of the present Congress which passed both Houses but did not receive the approval of the President. The reason for his disapproval appears in the Congressional Record for August 15, 1939, page 15882. There is, however, this difference between the two bills: S. 68 proposed to pay the San Francisco Mountain Scenic Boulevard Co. the sum of \$15,500 "as full settlement of the claim of said company against the United States arising out of expenditures made for the benefit of the United States" in the construction of a road within the Coconino National Forest; S. 2979 proposes to pay said company a like sum "as compensation for the value to the United States of that part of a certain road constructed by the company within the Coconino National Forest in Arizona which will be used by the United States for the protection, administration, and development of said national forest."

This Department, in its report of March 8, 1939, to your committee on S. 68, pointed out that the road in question was constructed by the company as a private venture for the purpose of providing what was intended to be a toll road which would reach the summit of the San Francisco Peaks and it was expected it would be extensively used by tourists. The construction of the road was never completed and the Department therefore terminated the rights of the company in the road. It is alleged that the company spent upward of \$150,000 on the project. The Supervisor of the Coconino National Forest reports that, in his opinion, if the company had not constructed that part of its road which reaches a point locally known as Fremont Saddle, the Forest Service, in order to properly administer that part of the national forest which is tributary to the road, would have felt obliged to construct at least a truck trail in order to give adequate protection to this part of the forest against forest fires. He states that the road has been used for this purpose. The regional forester at Albuquerque says, "That part of the road which has been valued at \$15,500 would have been constructed by the Forest Service for the proper administration of the Coconino National Forest" if it had not been constructed by the company.

In view of the statement of the local forest officers respecting the value of this road to the Government and what would probably have been expended by the Government for a road if this road had not been constructed, it would seem that it would be proper to make compensation to the San Francisco Mountain Scenic Boulevard Co. in the amount proposed in S. 2979 for the benefit which has accrued to the United States by reason of the construction of this part of the road.

Sincerely,

M. L. WILSON, *Acting Secretary.*

DEPARTMENT OF AGRICULTURE,
Washington, February 13, 1942.

HON. PRENTISS M. BROWN,
*Chairman, Committee on Claims,
United States Senate.*

DEAR SENATOR BROWN: Reference is made to your letter of January 28 on behalf of the Senate Committee on Claims, enclosing a copy of S. 244 for the relief of the San Francisco Mountain Scenic Boulevard Co. with a copy of the proposed report of your committee on the bill, and asking for a report thereon.

This measure is identical with S. 2979 of the Seventy-sixth Congress on which no action was taken by the Congress. This Department made a favorable report on S. 2979 on November 25, 1939, copy of which you propose to insert in your report on S. 244. The position of this Department remains unchanged and we concur in the draft of your report recommending passage of S. 244. The draft of your proposed report is returned.

Sincerely,

GROVER B. HILL,
Assistant Secretary.